



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Lewistown Field Office
920 North East Main Street
Lewistown, Montana 59457-4079
www.blm.gov/mt

In Reply Refer To:
4100 (P)

April 5, 2013

CERTIFIED MAIL NO. 7011 1570 0000 0366 0993
RETURN RECEIPT REQUESTED

Crooked Creek Cooperative State
Grazing District
c/o Carol Sluggett, Secretary
15182 Valentine Road
Roy, MT 59471

NOTICE OF PROPOSED DECISION

Dear Crooked Creek Board of Directors:

BACKGROUND

Buffalo Wallow Reservoir is located in T. 20 N., R. 26 E., Section 29 in Fergus County and serves as the primary water source for the southern portion of the Whisker Pasture in the North Crooked Creek Grazing Allotment. The reservoir is identified as a BLM hazard class dam due to the amount of water stored in the reservoir and is listed in the deferred maintenance program.

Outlet works in the dam became perforated and allowed water to flow uncontrolled on the outside of the conduit. This uncontrolled flow has created large caverns and sinkholes that threaten the safety of the dam. Furthermore, the backside of the dam is sloughing, threatening the overall integrity of the structure. The water level in the reservoir has been reduced. The existing outlet is still in place and has been buried by sediment. The dam structure has continued to deteriorate and, in its current state, poses a hazard to the public that use the area. The dam embankment is part of the existing road system in the area and is impassable due to a partial breach and existing sinkholes.

The BLM initiated the Buffalo Wallow Reservoir Reconstruction Environmental Assessment (EA) #MT-L060-2011-005-EA to analyze the impacts of alternatives to mitigate public safety issues associated with the road across the Buffalo Wallow embankment and address the needs of the failed outlet and failing embankment. The alternatives considered included: reconstructing the reservoir, reconstructing the reservoir and adding an exclosure fence to enhance/protect fish habitat, and breaching the reservoir.

PROPOSED DECISION

It is my proposed decision to implement Alternative 3, of the Buffalo Wallow Reconstruction EA (#MT-L060-2011-005-EA). The existing embankments of both Buffalo Wallow and Turkey Track Reservoirs would be breached to the point that neither reservoir would store any water. The following list describes all actions associated with the decision; these actions are expected to take less than one month to complete once initiated.

1. Repair sections of the existing access road on BLM lands for passage of equipment and vehicles in order to complete this alternative. Repairs will be the minimum needed in order to provide the needed equipment access to the project site, in accordance with Washington Office Instruction Memorandum #WO-IM-2012-043.
2. Construct a new offsite water pit for livestock and wildlife. The water pit would have a top dimension of 110' x 160' and be 16 feet deep and would provide 2.1 to 2.5 acre-feet of water. The pit would be located approximately a quarter mile southeast of Turkey Track Reservoir's current location and construction would be in conformance with Washington Office Instruction Memorandum #WO-IM-2012-043 which states, "Design structures in a manner that minimizes potential for production of mosquitoes which may carry West Nile virus." Future maintenance would be minimal and not require any new road construction to the water pit.
3. The original outlet works of Buffalo Wallow Reservoir will be removed. Metal components of the outlet works will be removed from the site.
4. The embankment breaches would be done on a maximum 3:1 slope. The Buffalo Wallow embankment should be breached with up to a 100 foot-wide bottom where the entire embankment is removed to allow future channel stabilization. Once the channel has stabilized the sides of the breach will be contoured to provide for a two-track trail to facilitate vehicle access for administrative and permittee access.
5. Excavated material would be used to backfill holes from the old spillway and outlet works to a more natural contour and repair existing downstream head-cuts as appropriate.
6. Topsoil would be conserved, contoured, and spread to the extent possible. The areas that are currently flooded would be reseeded in the future when the soil becomes dry enough to work with a tractor and seed drill. Reseeding of disturbed areas will be completed by BLM using an appropriate native seed mix that will include bunch grasses and forb species.

RATIONALE

Buffalo Wallow Reservoir has reached the end of its functional lifespan. While the BLM LFO realizes that Buffalo Wallow Reservoir has been a quality trout fishery in the past; the analysis conducted in the Buffalo Wallow Reconstruction EA (#MT-L060-2011-005-EA) determined that it is not in the BLM's best interest to reconstruct the reservoir to meet current BLM safety and design standards for hazard class dams. Factors that influenced this decision were:

- Lack of legal motorized access via easements
- Greater Sage-Grouse Preliminary Priority Habitat management objectives
- Public health and safety requirements
- Careful consideration of expenditures of public funds

Since its construction, there have never been easements in place that guarantee the public motorized access to Buffalo Wallow Reservoir. The BLM has made several attempts since the 1990s to obtain easements across these private parcels with no success. Historically, the landowners along the access route have allowed temporary access for construction purposes and public access if traffic is confined to the existing route. This limited access could be allowed indefinitely or taken away without notice by any of the current or future landowners. The BLM has no authority to force private landowners to grant the public access. Until 2008, Montana Fish, Wildlife and Parks stocked Buffalo Wallow with rainbow trout (*Oncorhynchus mykiss*) on a regular schedule; however, this has always been done without a formalized access agreement with the private landowners. A reconstruction alternative was not selected because the

amount of work (and associated costs) to return the reservoir to a functional state is not justified without legal motorized public access.

Building a new access route was considered as an alternative if the reservoir was to be reconstructed. This alternative was dropped from further analysis as any of the possible access routes would be located entirely within Greater Sage-Grouse Preliminary Priority Habitat (PPH). In 2010, the U.S. Fish and Wildlife Service (FWS) concluded that the BLM does not currently have “adequate regulatory mechanisms” to ensure long-term Greater Sage-Grouse conservation. In order to address FWS concerns, the LFO is amending its resource management plan (RMP). Until that decision is in place, LFO has been following Washington Office procedures outlined in Washington Office Instruction Memorandum #WO-IM-2012-043, Greater Sage-Grouse Interim Management Policies and Procedures, which provides guidance for the BLM in managing Greater Sage-Grouse PPH. As summarized in the BLM’s National Strategy, emphasis for protecting and managing Greater Sage-Grouse habitat incorporates the following principles:

1. Protection of unfragmented habitats;
2. Minimization of habitat loss and fragmentation; and
3. Management of habitats to maintain, enhance, or restore conditions that meet Greater Sage-Grouse life history needs.

Additional interim conservation policies and procedures in Washington Office Instruction Memorandum #WO-IM-2012-043 for Preliminary Priority Habitat (PPH) include:

Travel Management-Proposed Authorizations/Activities

- *Route construction should be limited to realignments of existing or designated routes to enhance other resources only if that realignment conserves or enhances sage-grouse habitat. Use existing roads, or realignments as described above, to access valid existing rights that are not yet developed. If valid existing rights cannot be accessed via existing roads, then any new road constructed will be built to the absolute minimum standard necessary. No improvement to existing routes will occur that would change route category (i.e., road, primitive road, or trail) or enhance capacity.*

Identified alternative access routes would add two and a half to four and a half miles of new road in Greater Sage-Grouse PPH. Any new road construction would impact habitat for Greater Sage-Grouse by the direct loss of sagebrush cover, displacement of Greater Sage-Grouse nesting sites, and the increased spread of noxious weeds. The potential new routes considered but not analyzed would neither consolidate use nor benefit Greater Sage-Grouse. This action would be contrary to current management direction in Washington Office Instruction Memorandum #WO-IM-2012-043.

Two of the three potential routes identified would still require an easement from a private landowner to guarantee access. If a new route was constructed only on BLM-administered land (route C), it would require a significant amount of construction to cross Whisker Coulee, which would increase the disturbance level past that of a “two-track” trail. This route would also occur 0.3- mile from an identified Greater Sage-Grouse lek. This lek has had a significant decline in male Greater Sage-Grouse attendance, from 44 in 2006 and becoming lower in each of the five subsequent surveys to a low of 3 in 2012. The reason for the sharp decline is not known; however, a portion is likely the result of the severe winters and wet springs in 2010 and 2011. The impacts of the new route construction to Greater Sage-Grouse could be mitigated by reclaiming existing routes in the area; however, no routes for reclamation have been identified. Constructing the new route entirely on BLM-administered land would add three miles of new road; while only one mile of the existing Buffalo Wallow access route would be eligible for reclamation due to the checkerboard nature of land ownership in the area.

The selection of Alternative 3 (breach Buffalo Wallow and Turkey Track) would eliminate the public safety concerns associated with the dysfunctional reservoir while still maintaining a source for livestock and wildlife water in the area. This decision is in conformance with the Judith Resource Area Resource Management Plan (September 1994) and Washington Office Instruction Memorandum #WO-IM-2012-043.

AUTHORITY

The following sections of the Code of Federal Regulations, Chapter 43, provide authority for the actions proposed in this grazing decision. The language of the cited sections can be found at a library designated as a federal depository or at the following web address:

<http://www.gpoaccess.gov/cfr/index.html>

§4120.3 Range improvements

§4160.1 Proposed decisions

§4160.2 Protests

§4160.3 Final decisions

§4160.4 Appeals

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee, or other interested public may protest a proposed decision under Section 43 CFR 4160.2, in person or in writing, to:

Geoff Beyersdorf, Field Manager
Bureau of Land Management
Lewistown Field Office
920 Northeast Main Street
Lewistown, MT 59457

Protests shall be made within 15 days of receipt of this proposed decision. The protest, if filed, should clearly and concisely state the reason(s) why the proposed decision is in error.

If a protest is filed in a timely manner, the protest statement of reasons and other pertinent information will be considered and a final decision will be issued with right of appeal in accordance with 43 CFR 4160.3(b) and 43 CFR 4160.4. In the absence of a protest, the proposed decision will become my final decision without further notice.

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final. The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the Lewistown Field Office as noted above. The BLM does not accept appeals by facsimile or email.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and should otherwise comply with the provisions of 43 CFR 4.470.

In accordance with 43 CFR 4.21(b) (1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of the immediate and irreparable harm if the stay is not granted.
- (4) Whether the public interest favors granting the stay.

If you have any questions concerning this grazing decision, please contact Steve Smith, Rangeland Management Specialist at 406/538-1974 or Adam Carr, Supervisory Natural Resource Specialist at 406/538-1913.

Sincerely,

A handwritten signature in cursive script, appearing to read "Geoff Beyersdorf".

Geoff Beyersdorf
Field Manager

AFFECTED PARTIES AND/OR INTERESTED PUBLIC

CERTIFIED MAIL NO. 7011 1570 0000 0366 0030
RETURN RECEIPT REQUESTED

William and Gerald Lohse
Box 276
Carter, MT 59420

CERTIFIED MAIL NO. 7011 1570 0000 0366 0023
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Western Watersheds Project
ATTN: Tom Woodbury
WWP Montana Director
P.O. Box 7681
Missoula, MT 59807